Getting Parents Involved:
How to Establish Personal Jurisdiction Over Parent and Affiliate Companies
By: Travis Brown, Assistant Attorney General, Office of the Attorney General of Tennessee
This article represents the opinion of the author and not necessarily those of the Office of the Tennessee Attorney General and Reporter.

A successful case requires more than simply prevailing at trial; it requires a solvent defendant. But what happens when the defendant cannot pay the judgment? In state civil enforcement actions, we often seek restitution payments for consumers in our states. How do we ensure that restitution (or civil penalties, attorney fees, etc.) is paid? One method is through parent and affiliate liability. Parent companies can engage in deceptive and unfair conduct through their subsidiaries. In other contexts, parents hold gains obtained illegally by subsidiaries.1 However, establishing personal jurisdiction over these solvent entities can present problems. These companies often interact with different states only through subsidiary or affiliate entities, never actually making contact with most states.

However, there are several ways to establish personal jurisdiction over a parent or affiliate company, including the alter ego theory, the agency theory, and conspiracy jurisdiction. The alter ego and agency theories are frameworks for “jurisdictional piercing,” or “the judicial process under which the separate legal existence of a company is disregarded so as to make a shareholder of the company subject to the personal jurisdiction of a court . . . .”2 Although the general rule is that the “parent-subsidiary relationship alone is insufficient to attribute the contacts of the subsidiary to the parent for jurisdictional purposes,” the alter ego and agency theories are two exceptions.3

The alter ego theory requires a prima facie showing that “(1) there is such unity of interest and ownership that the separate personalities [of the two entities] no longer exist and (2) that failure to disregard [their separate identities] would result in fraud or injustice.”4 In other words, the plaintiff must make a showing that the subsidiary “is a mere instrumentality” of the parent.5 Similarly, the agency theory requires a prima facie showing that “the subsidiary represents the parent company by performing services ‘sufficiently important to the [parent]”

---

1 These parent companies are called “relief defendants.” See FTC v. Think Achievement Corp., 144 F. Supp. 2d 1013, 1020 (N.D. Ind. 2000).
4 Harris Rutsky & Co., 328 F.3d at 1134 (quoting Doe v. Unocal Corp., 248 F.3d 915, 926 (9th Cir. 2001) (Doe I) (internal quotations omitted)).
5 Harris Rutsky & Co., 328 F.3d at 1135 (quoting Calvert v. Huckins, 875 F. Supp. 674, 678 (E.D. Cal. 1995)).
corporation that if it did not have a representative to perform them, the [parent] corporation . . .
would undertake to perform substantially similar services.”6 These theories can be pled alternatively in a complaint. If either one is satisfied, the contacts of a subsidiary are imputed to the parent.

Conspiracy jurisdiction provides another method of exercising personal jurisdiction over corporate parents and affiliates. It finds its roots in the concept of civil conspiracy. When two or more individuals conspire to do something that one could reasonably expect to lead to consequences in a forum, overt acts committed by a co-conspirator in the forum are attributable to other co-conspirators if such acts are of a type that would subject a non-resident to personal jurisdiction under a long-arm statute.7 In other words, engaging in a conspiracy imputes the contacts of each co-conspirator to the others. Therefore, even co-conspirators with no forum contacts can be subject to personal jurisdiction in such forums.8

One last passing idea: consider using online activity to establish specific personal jurisdiction. For example, where it is possible to establish a parent or affiliate’s control over a subsidiary’s website, such contacts (if considered to be purposeful availments) could contribute to a claim of alter ego, agency, or conspiracy personal jurisdiction claims.9 All of these theories, if pled alternatively, can help secure the restitution and/or civil penalties sought in a consumer protection civil enforcement action.

Each month, the Center for Consumer Protection will provide an article written by an assistant attorney general. If you would like to provide an article, please email Blake Bee at bbee@naag.org.

---

6 Id. (quoting Chan v. Society Expeditions Inc., 39 F.3d 1398, 1405–06 (9th Cir. 1994)).
8 Id.